



Virginia
Regulatory
Town Hall

townhall.state.va.us

Proposed Regulation Agency Background Document

Agency name	Virginia Pesticide Control Board
Virginia Administrative Code (VAC) citation	2 VAC 20 - 40
Regulation title	Regulations Governing Licensing of Pesticide Businesses Operating Under Authority of Virginia Pesticide Control Act
Action title	Amend
Document preparation date	Enter date this form is uploaded on the Town Hall

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The existing regulations establish requirements of pesticide businesses to (i) obtain an annual business license; (ii) keep records; and (iii) provide proof of financial responsibility. In addition, it sets conditions for revocation, suspension, and denial of a pesticide business license.

The proposed amendments (i) define a pesticide business location; (ii) modify the date for a late fee assessment in regards to pesticide business license renewal; (iii) modify the proof of financial responsibility; and (iv) modify record keeping requirements for pesticide businesses.

Basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Section 3.1-249.30 of the Code of Virginia (1950), as amended, (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+3.1-249.30>) provides the discretionary authority for the regulation. Section 3.1-249.30 of the Code of Virginia authorizes the Pesticide Control Board (Board) to promulgate regulations in regards to pesticide businesses as follows: "...the Board may promulgate regulations... including but not limited to the following: 1. Licensing of businesses that manufacture, sell, store, recommend for use, mix or apply pesticides. ... 3. Requiring reporting and record keeping related to licensing and registration. ... 5. Revoking, suspending or denying licenses (business), registration (products), and certification or certificate (applicators or technicians)." In addition, Sections 3.1-249.46 (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+3.1-249.46>), 3.1-249.49 (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+3.1-249.49>) and 3.1-249-50 (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+3.1-249.50>) notes the Board's authority for promulgating pesticide business licensing regulations in support of Section 3.1-249.30.

The Office of the Attorney General has certified the Board has the statutory authority to promulgate the proposed regulation.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

The purpose of the proposed action is to review the regulation for effectiveness and continued need. The regulation establishes standards and procedures in regards to pesticide businesses as defined in Section 3.1-249.27 of the Virginia Pesticide Control Act.

The need for the regulation is to (i) protect the public's health, safety and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth; (ii) establish standards for the licensure of pesticide businesses (and for the denial, suspension, or revocation of the license); and (iii) establish record keeping requirements for licensed pesticide businesses, as a means of ensuring that pesticides are stored and used safely.

The regulation is necessary to protect the health, safety and welfare of citizens because it ensures that all businesses applying pesticides for compensation employ an individual who is knowledgeable of (i) pesticide laws and regulations, (ii) potential hazards of pesticides to man

and the environment and (iii) the safe distribution, use and disposal of pesticides. In addition, the regulation requires that pesticide businesses (i) maintain a minimum amount of liability insurance and (ii) keep and maintain records of the sale of restricted use pesticides and the application of all (restricted and non-restricted use) pesticides to protect the citizens of the Commonwealth from any pesticide misapplications or accidents.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

Substantive changes to existing sections include:

1. Deletes the definition of bond to be compatible with 1993 amendments to the Pesticide Control Act in §3.1-249.49.
2. Modifies the definition of pest management consultant to include anyone making any pesticide recommendations commercially in Virginia.
3. Defines a pesticide business location to clarify what is a separate outlet or location of a pesticide business.
4. Changes the renewal date for pesticide business licenses to be compatible with the 1993 amendments to the Pesticide Control Act in §3.1-249.47 that deleted references to the renewal of pesticide business licenses 60 days prior to their expiration.
5. Deletes the recordkeeping requirement by commercial applicators for the application of restricted use pesticides.
6. Deletes surety bond and self-insurance as evidence of financial responsibility to be compatible with 1993 amendments to the Pesticide Control Act in §3.1-249.49.

New substantive provisions include:

1. Requires pesticide businesses keep records of all pesticide applications.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The primary advantage of the proposed amendments to the public are that their health and safety will be better protected by the pesticide application record keeping requirements for pesticide

businesses. Requiring pesticide businesses to keep records of all pesticide applications will ensure that the pesticides are properly applied, as the records will be available for inspection by state enforcement personnel. The recordkeeping requirement will be a disadvantage to the minority of pesticide businesses that currently do not keep records of general use pesticide applications. It is estimated that only 20% of licensed pesticide businesses do not keep these records. The main advantage to the agency is that pesticide application records for all pesticide applications, not solely restricted pesticide applications, will be available for inspection whenever an inspection is conducted or an investigation is conducted in response to a complaint. Another matter pertinent to the regulated community is that there will be less confusion regarding what constitutes a pesticide business location and the licensure requirements for a location.

There are no disadvantages to the public or the Commonwealth of Virginia.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	The projected cost to the state to implement and enforce the proposed amendments is neutral as the amendments do not add or reduce the workload or responsibilities with expenditures being ongoing. Fund source/fund detail is 09/01
Projected cost of the regulation on localities	There is no projected cost on localities.
Description of the individuals, businesses or other entities likely to be affected by the regulation	<ol style="list-style-type: none"> 1. Businesses that, in exchange for compensation, distribute, apply, recommend for use, store, sell or offer for sale pesticides directly to the user. (pesticide businesses). 2. Individuals who provide technical advice, supervision or aid or recommendations for pesticide application commercially (pest management consultants).
Agency’s best estimate of the number of such entities that will be affected	<ol style="list-style-type: none"> 1. Approximately 2,179 pesticide businesses 2. Approximately 636 pest management consultants.
Projected cost of the regulation for affected individuals, businesses, or other entities	It is projected that costs to individuals (pest management consultants) will be neutral as the

	<p>amendment in 2 VAC 20-40-10 regarding the definition of pest management consultants is solely to make it comply with the requirements of 2 VAC 20-40-40, which already requires pest management consultants to obtain a pesticide business license if they make recommendations for any pesticide use commercially. In addition, there will be no fiscal impact on individuals by the deletion in 2 VAC 20-40-80 of surety bond and self-insurance as evidence of financial responsibility because (i) no individual ever took advantage of this option and (ii) conversations with individuals indicated that it was impossible to obtain a surety bond for this purpose and self-insurance in the amount required was not a financially sound business decision.</p> <p>It is projected that the approximately 2,179 licensed pesticide businesses will realize a total savings of approximately \$544.75 by not renewing their business license for an additional 2 months. This is assuming that the \$50 licensing fee is kept in a 3% interest bearing account for the 2 month period ($2,179 \times \\$50 \times .03 = \\$3,268.50$ (annual interest earned); $\\$3,268.50 / 12 \text{ months} \times 2 \text{ months} = \\544.75 (interest earned in 2 months)).</p> <p>Current regulation requires record keeping for all restricted use pesticide applications. It is estimated that 20% of all pesticide applications include restricted use pesticides. Data from current licensed pesticide businesses indicate that 80% already keep records of all pesticide applications as a matter of good business practices. It is estimated that the amendment will impact 16% of the licensed pesticide businesses. With 1,925 licensed pesticide businesses indicating that they apply pesticides, the amendment will impact approximately 308 licensed pesticide businesses. These businesses will realize an estimated cost increase of approximately \$.17 per record for each general use pesticide</p>
--	---

	<p>application. This is based upon an hourly wage of \$10.00 per hour with each record taking approximately 1 minute to make. Assuming an average of 10 pesticide applications per day with 254 workdays per year, the total fiscal impact is estimated to be \$132,994 or approximately \$431 per licensed pesticide business per year.</p>
--	--

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

No alternatives to this regulation exist to protect human health, the environment, or the public from fraudulent commercial pesticide applications. Without pesticide business licensing, no uniformity or safety criteria would exist that would be enforceable under state authority.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response
None		

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

Unless otherwise discussed in this report, this regulation has no impact upon families.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
2 VAC 20-40-10			The proposed amendment will delete the definition of bond to be compatible with 1993 amendments to the Pesticide Control Act in §3.1-249.49. A second proposed amendment will modify the definition of pest management consultant to include anyone making recommendations for any commercial pesticide application. The proposed amendment expands the definition from those recommending only restricted use pesticides to also include those recommending general use pesticides as well. This will make the definition compatible with 2 VAC 20-40-40. A third proposed amendment will add the definition of a pesticide business location to clarify what is a separate outlet or location of a pesticide business as outlined in § 3.1-249.46 C. of the Pesticide Control Act. This will reduce confusion in the regulated community as to which locations must be licensed as a pesticide business.
2 VAC 20-40-20			The proposed amendment changes the date for renewal of pesticide business licenses to be compatible with the 1993 amendments to the Pesticide Control Act in §3.1-249.47 that deleted references to the renewal of pesticide business licenses 60 days prior to their expiration.
2 VAC 20-40-70		The current regulation requires record keeping by commercial applicators for only restricted use pesticide	The proposed amendments require pesticide businesses to keep records of all pesticide applications. This includes both restricted use and general use pesticides. The proposed amendment will enable the

		applications.	agency to more efficiently and effectively conduct investigations for enforcement of the Pesticide Control Act.
2 VAC 20-40-80			The proposed amendments delete all references to surety bonds and self insurance to be compatible with the 1993 amendments to the Pesticide Control Act in §3.1-249.49.
2 VAC 20-40-90			The proposed amendment deletes reference to self insurer to be compatible with 1993 amendments to the Pesticide Control Act in §3.1-249.49.
2 VAC 20-40-120			The proposed amendment deletes this section since the regulation sections it references are no longer in the Virginia Administrative Code.